No. 84-1340

IN THE

Supreme Court of the United States

October Term, 1985

Wendy Wygant, et al.,
Petitioners,

v.

Jackson Board of Education, et al.,
Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF OF NATIONAL SCHOOL BOARDS ASSOCIATION AS AMICUS CURIAE SUPPORTING RESPONDENTS

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This brief amicus curiae in support of Respondents is submitted with the written consents of counsel to all parties. Letters of consent are on file with the Clerk of the Court.

INTEREST OF AMICUS CURIAE

Amicus curiae, National School Boards Association (NSBA), is a nonprofit federation of this nation's state school boards associations, the District of Columbia school board and the school boards of the offshore flag areas of the United States. Established in 1940, NSBA is the only major national educational organization representing school boards and their members. Its membership is responsible for the education of more than ninety-five percent of this nation's public school children.

The individuals who compose this nation's school boards are elected or appointed community representatives, most of whom are not professional educators. They are responsible under state law for

the fiscal management, staffing, continuity, and educational productivity of the public schools within their jurisdictions. NSBA submits this brief in the belief that the most effective manner of assuring an equal educational opportunity for all school children is through voluntary compliance by school boards and administrators with constitutional and statutory civil rights mandates.

If this Court requires school boards to wait for a court to order compliance with civil rights laws, rather than allowing boards to take the initiative on their own, such a decision could threaten the ability of the nation's public school boards to ensure that school systems are operated in a nondiscriminatory manner and in a climate of cooperation, not coercion.

ISSUE PRESENTED FOR REVIEW

Petitioners frame the issue presented for review as follows:

> Does the Constitution permit a public employer to adopt racial preferences for school teacher layoffs in the absence of judicial or administrative findings of past discrimination in employment or education based solely upon differences between the respective percentages of minority teachers and students?

Amicus respectfully submits that the issue is misstated. The lower court explicitly refused to rule on the question of whether the District Court was correct in utilizing the minority student ratio to determine underrepresentation of teachers, stating "no such issue was presented." 746 F.2d 1152, 1156 footnote 1. The issue decided below, and the issue which Amicus will address in its brief is:

> Whether the Constitution permits a public employer to enter into a collective bargaining agreement which,

> in the event the district finds it necessary to lay off teachers, requires the district to maintain the same majority-minority ratio as existed at the time of the layoffs.

Amicus submits that the issue of the constitutionality of a standard used for hiring of teachers, which compares the student minority-majority ratio with the teacher ratio, is a separate issue from the one which is presented to the Court in this case. The Petitioners did not plead nor did the lower court decide the issue of discrimination in hiring. The sole issue for resolution here is whether the layoff provision in the contract is constitutional.

ARGUMENT

I. INTRODUCTION

Amicus agrees fully with the constitutional arguments made by Respondents and incorporates by reference the arguments set forth in the brief filed

herein by Respondents. Because the constitutional issues are fully briefed by Respondents, Amicus will address the broader policy questions presented by this case.

Petitioners argue for a rule that would prohibit school boards, in absence of a court order, from taking race into account at all in making decisions regarding employees. Such a rule would go beyond the requirements of the Constitution and, equally important, would be poor educational and public policy. As stated by Chief Justice Burger in the landmark case of Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 16 (1971):

> "School authorities are traditionally charged with broad power to formulate and implement educational policy and might well conclude, for example, that in order to prepare students to live in a pluralistic society each school

> should have a prescribed ratio of Negro to white students reflecting the proportion for the district as a whole. To do this as an educational policy is within the broad discretionary powers of school authorities; absent a finding of a constitutional violation, however, that would not be within the authority of a federal court."

In absence of clear constitutional proscription to the contrary, school boards should continue to have the authority to use whatever methods they deem appropriate to maximize the benefits of the educational system for the students in the district.

II. THERE IS NO CONSTITUTIONAL DUTY TO GRANT A PREFERENCE TO EMPLOYEES ON THE BASIS OF SENIORITY.

The brief filed herein by Petitioners, as well as the briefs of amici who support the Petitioners' position, imply that the concept of seniority is sacrosanct and endows the senior employee with some kind of special constitutional right. That, of

course, is not the case.

Seniority is not a concept etched in constitutional stone, so heavy that it outweighs other considerations that may validly enter layoff determinations. Certainly, the Court has recognized that public employment contracts may create a property interest meriting due process protections. See, e.g., Cleveland Board of Education v. Loudermill, 105 S.Ct. 1487 (1985). However, the Constitution in no way awards incremental degrees of protection based solely on the number of years an employee has held a particular position. Although reducing the faculty in order of seniority may be more objective than other layoff criteria, the relative objectivity should not be confused with issues of constitutionality.

Preserving seniority rights of public

employees during a reduction in force can be supported on several grounds. However, such a goal should not be allowed to rise to the level of a constitutional barrier preventing a public employer from voluntarily entering into a collective bargaining agreement that recognizes the need to accord special treatment to minority personnel so that past racial imbalances in staff composition do not once again become present reality.

State statutes in large part acknowledge that school boards should retain discretion in making layoff determinations and do not create entitlement to seniority rights.

Amicus has attached at Appendix A a state-by-state analysis of statutory provisions relating to reductions in force. Forty-one states have statutory

provisions which authorize school districts to employ reductions in force for a variety of specified reasons, such as decreased enrollment, reorganization, fiscal limitations or the elimination of a program or position. Of the statutes which authorize reductions in force, nineteen do not statutorily impose the order of dismissal or suspension when a reduction of personnel becomes necessary. The absence of restrictions in this regard clearly suggests that these state legislatures have left layoff decisions to the discretion of the local school boards.

The twenty-two states that do specify a particular layoff scheme that school boards must follow in reducing their faculties vary in the degree of statutory control they exert. Only seven states provide that teachers must be laid off in

reverse order of seniority, without indicating any possibility of variance. (Two of these states include in their layoff scheme a provision calling for nontenured teachers to be dismissed first). Three other states require school districts to follow a nontenured first rule in laying off teachers, without other restriction.

It should be noted that the imposition of a nontenured first rule does not restrict the school district's discretion in determining which nontenured teachers should be dismissed in the event of a reduction in staff levels and, once all nontenured teachers are dismissed, there is no restriction as to which tenured teachers should be dismissed first. In fact one state, Connecticut, provides that tenured personnel be dismissed according

to the terms of the collective bargaining agreement negotiated between the district and the teachers' union.

All of the remaining twelve states of the twenty two specifying a particular layoff system, allow the local school district to modify or deviate from the statutorily mandated layoff plan under certain circumstances or otherwise allow the districts to control the layoff policy.

Six states provide inverse seniority as the general order in which layoffs should be made (one includes a nontenured first rule as well) but specifically list instances where school districts may diverge from this pattern in order to satisfy special curriculum needs, equal protection considerations, collective bargaining terms or affirmative action

contract purposes.

Two states, Florida and Maine, explicitly require that layoff of teachers be controlled by the terms of a collective bargaining agreement. Maine's statute also contains a proscription against the use of seniority as the sole criterion for layoff. Oregon provides that layoff decisions be made on the basis of affirmative action needs, seniority and merit. The interests of the school system control the order in which teachers in Louisiance may be dismissed for reduction in force purposes. Finally, one legislature simply requires each school board to establish a written layoff policy.

Clearly, the states overwhelmingly prefer giving local school districts either total or partial control over

layoff determinations rather than restricting the order of suspension or dismissal to inverse seniority. As noted above, only seven of the fifty states and District of Columbia bind school districts to inverse seniority layoff schemes without permitting any variance. Even adding the other three states which require strict adherence to a nontenured first rule to this figure does not change the conclusion that the vast majority of state legislatures have not made seniority in public employment into a statutory bulwark impervious to the real need for discretion on the part of school boards to include race as a factor in making layoff decisions.

NSBA conducted a survey, for the purpose of the submission of this brief, of the membership of its Council of Urban

Boards of Education to elicit views as to the effect which reversal of the lower court decision would have on affirmative action efforts in the largest school districts in the country and to determine what criteria the boards use in making decisions on layoffs.

The Council of Urban Boards of Education was established by NSBA in 1967 to address the unique needs of school board members serving the largest cities of the United States. Its membership is composed of school boards in communities with a core-city population of least 100,000 persons.

Approximately 60% of the membership of the Council of Urban Boards responded to the NSBA survey. The names and enrollment of the districts which responded are listed in Appendix B. Those survey

respondents are responsible for the education of 5,188,025 children, which constitutes over 13% of the total student enrollment in elementary and secondary schools in the nation and over 50% of the minority student enrollment. Thus, the impact of the policies and practices of these districts on the education of the nation's children is significant.

Over two-thirds of the respondents to the survey have adopted voluntary affirmative action plans. Forty-one of the districts are parties to collective bargaining agreements, out of which 18 have affirmative action provisions. Thirty-seven districts have provisions relating to reductions in force in their affirmative action plan, their collective bargaining contract or a board policy. Twelve of the districts have provisions in

their plans or contracts which treat minorities differently for layoff purposes. Fourteen other districts treat minorities differently for the purpose of promotion or transfer. Four districts treat other groups of employees differently for the purpose of layoff, two exempt mathematics and science teachers from layoff and one exempts the head coach as well as requiring that the minority-majority ratio be maintained.

With reference to the head coach exemption, one wonders about the state of the law if a school board may take affirmative action to assure that the head coach is not laid off but may not take action to assure that an inordinate number of minority faculty members are not laid off.

III. THE EQUAL PROTECTION CLAUSE DOES NOT REQUIRE ALL RACES TO BE TREATED THE SAME.

Although a court might not have the authority to require the school board to assure that the proportion of minority to majority teachers is maintained, the school board does and should have the authority to voluntarily agree with its teachers' union to maintain that proportion.

The concept of equality does not necessarily mean treating people the same. It is naive to believe that equality can be promoted without taking account of race. All things being equal, a "color blind" system may be the best system. But all things are not equal in a school system where treating all employees the same in a layoff situation would result in the dismissal of all or most of the

minority employees, Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 28 (1971).

Unfortunately this country is still suffering the results of massive discrimination against minorities and it will take more than court orders to remove those effects. Public and private employers alike must take voluntary affirmative efforts to eradicate discrimination from society, "root and branch." Green v. County School Board, 391 U.S. 430 (1968). There is no way that those efforts will be effective if employers are required to be "color blind."

This Court has noted that teachers should be assigned to schools in a manner that avoids creating the perception that a school is for whites only or for blacks

only. Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 18 (1971). Similarly, in the instant case what perception would have been created if the Petitioners' idea of "equality" had been put into place and teachers were dismissed on the basis of seniority? It does not require a study to reach the conclusion that dismissing most of the black teachers in the district would have a negative impact on black students.

Amicus endorses the discussion in Respondent's brief relating to the question of whether all distinctions based on race are "suspect" under the Equal Protection Clause. It may be true, as noted in the brief of Petitioners, that any distinction based on race might cause a certain amount of strife. However, that is not a reason to elevate all such

classifications to a level above other types of distinctions. One wonders if an art teacher would not be as upset over being laid off in favor of a head coach with less seniority than would a white teacher in the same situation with a black teacher. Layoffs cause controversy in whatever form they are made.

IV. SCHOOL BOARDS MAY CONSTITUTIONALLY MAKE RACE-CONSCIOUS EMPLOYMENT DECISIONS TO IMPLEMENT A POLICY THAT A RACIAL MIX IN THE DISTRICT'S FACULTY IS BENEFICIAL TO THE EDUCATION OF THE STUDENT BODY.

Petitioners disagree with the Jackson Board of Education's rationale in attempting to assure that the minority-majority ratio of teachers is not altered by the layoffs. Petitioners argue that there is no evidence to show that having black "role models" is necessarily beneficial to a black student's ability to

learn.

Psychological studies have shown that race and ethnicity are important factors in both the student-teacher relationship and the learning process. For example, research has shown that black and white teachers have markedly different academic expectations for their students, clearly favoring students of their own race when questioned as to which will achieve certain educational goals. Hendersen, E. and Long, B. Academic Expectancies of Black and White Teachers for Black and White First Graders. Proceedings of the 77th Annual Convention of the American Psychological Asssociation, Montreal, Canada 1973 Vol. 8, 687-688.

Studies have also shown that teachers direct different amounts and forms of praise and criticism towards students of

different races. . Simpson, A. and Erickson, M. Teachers' Verbal and Nonverbal Communication Patterns as a Function of Teacher Race, Student Gender and Student Race. American Educational Research Journal, 1983 (Sum.), vol. 20(2), 183-198.

The majority of the respondents to NSBA's survey of its Council of Urban Boards of Education stated their belief that affirmative action in employment is an important tool in the education of all children, both black and white, and school boards should have as wide discretion as possible in developing voluntary plans. Some opined that it is particularly important to allow such provisions in collective bargaining agreements.

Following are some examples of policy statements on the subject of role models

and affirmative action which are contained in affirmative action plans submitted as a part of the NSBA survey:

- [I]t has been recognized by most educators within our pluralistic society, that school districts have an obligation to promote cultural, racial, and human understanding within the communities they serve. An effective method for this district of achieving this objective is to provide students with a district staff that is reflective of both sexes, as well as multi-ethnic and cultural characteristics of society.

- To provide in-depth education, the schools need to provide in the learning environment an opportunity for children to experience highly qualified representatives of all ethnic groups and cultures as part of their education since they need to learn to function in a pluralistic world.

- America is a land of diversity whose quality of character springs from the creativity, the toil, the intelligence and the struggles of individuals of all races and cultures. It is important, therefore, that all students

understand and appreciate that their world is built by the hands and minds of people who are from many national, religious, ethnic and cultural backgrounds. This understanding and appreciation is enhanced when students see members of their own ethnic groups in roles of inspirational leadership.

- [S]ome of our children are handicapped by being separated residentially and socially from the majority of the community's population by reason of their ethnic and economic background.

  [T]his separation...is rooted in causes which are far beyond the power of the schools alone to correct or eliminate; the cooperative efforts of all segments of the population and its agencies, public and private, are required.

  [T]he public schools, however, have the responsiblility to make every possible effort consistent with their educational responsibilities to minimize the effect of this separation among pupils. In this we are cognizant both of the handicap imposed on the child subjected to separation, and the fact that pupil groupings representative of a broad cross-section of all elements in the community is a desirable educational environment for all pupils involved.

> • The minority student attending a school with a relatively high percentage of minority students [should have] available to him the positive image provided by a minority teacher, counselor and administrator.
>
> Minority students should be provided with employees of their own race whom they can recognize as examples of occupational achievement. The child from the majority group should have positive experiences with minority people which can be provided, in part, by having minority teachers, counselors and administrators where the enrollment is largely made up of majority group students. Majority students should be given an opportunity to be instructed by, and relate to, members of minority races in order to alleviate racial isolation.

There is a continuing argument among educators as to what makes children learn. And, education being more an art than a science, the debate will continue. However, whatever merit there is in either side of the argument as to whether

children learn better with a racially mixed faculty, that argument should not be fought in the courts.

As this Court has cautioned on several occasions, "courts lack the 'specialized knowledge and experience necessary to resolve persistent and difficult questions of educational policy'." Board of Education et al. v. Rowley, 102 S.Ct. 3034 (1982).

The issue here is not whether the school board was correct in its educational judgment that the students will be better served with a mixture of races on the faculty. That is not an issue which courts should attempt to resolve. The issue for the courts is whether, in order to meet its policy objectives, a board may constitutionally exempt minority faculty members from an

otherwise racially neutral scheme of layoffs in order to maintain a racial mixture.

If hiring decisions are made in a constitutional manner in the first instance, the school board may constitutionally elect to maintain the racial mix which resulted from the nondiscriminatory hiring.

Petitioners complain of what they call racial "preferences." As noted above, the Petitioners also misstate the issue in this case as being related to the hiring decisions made by Respondents. But the policy of maintaining the racial mix of the district in the event of the need to lay off teachers, is conceptually, and possibly constitutionally, different from a so-called "preference" of one race over another in hiring. Where an employer has,

through constitutionally valid affirmative action efforts, realized a goal of a particular minority-majority ratio, it would seem permissible for the employer to take steps to protect that ratio, even by the means of exempting minorities from layoff to the extent required to retain the existing racial proportion.

Amicus urges this Court not to overturn Jackson's layoff plan merely because of allegations in briefs that the hiring methodology was allegedly constitutionally infirm. It should be noted that first, there is no evidence that the hiring process was faulty, the lower court having expressly stated that it was not reaching that issue; and second, that the board used the student body ratio only as a "goal." There is no evidence that the Jackson Board hired

minority personnel in order to meet a quota or that it refused jobs to whites solely because of their race. Race is a proper criterion for employment, if not used as the sole consideration and the use of goals in affirmative action plans has been expressly upheld by the courts.

Contractors Ass'n of Eastern Pa. v. U.S. Department of Labor, involved the question of whether the President had the authority to require federal contractors to establish goals and timetables to increase minorities in their workforces. The union plaintiffs argued that such a requirement was discriminatory and that the government did not have the authority to make such requirements in absence of a court finding of discrimination. The court held:

> "Even absent a finding tht the situation found to exist in the

> five-county area [low percentage of minorities] was the result of deliberate past discrimination, the federal interest in improving the availability of key tradesmen in the labor pool would be the same. While a court must find intentional past discrimination before it can require affirmative action under 42 U.S.C. section 2000e5(g), that section imposes no restraint upon the measures which the President may require of the beneficiaries of federal assistance." 442 F.2d 159, 175 (3rd Cir. 1971).

> "[T]he plaintiffs urge that the specific goals specified by the Plan [which requires the setting of goals and timetables for hiring of minorities] are racial quotas prohibited by the equal protection aspect of the Fifth Amendment...The Philadelphia Plan is valid Executive action designed to remedy the perceived evil that minority tradesmen have not been included in the labor pool available for the performance of construction projects in which the federal government has a cost and performance interest. The Fifth Amendment does not prohibit such action. .A finding as to the historical reason for the exclusion of available tradesmen from the labor pool is not essential for federal contractual

remedial action." at page 177.

But even assuming arguendo that, in absence of a court order, a school board cannot refuse to hire members of one race in order to reach a desired minority-majority ratio, it does not follow that an employer cannot constitutionally exempt from layoff members of one race in order to maintain a ratio which was achieved in a constitutional manner.

The entire argument of Petitioners is based on an assumption that there is only one reason for which a public employer may constitutionally exempt minorities from layoff. That reason, under Petitioners rationale, is when there has been a finding by a court that the particular employee exempted from layoff would have had seniority had the employer not

subjected the employee to discrimination on the basis of his or her race.

In order to accept that argument several assumptions must be made: first, that senior employees have a constitutional right to be laid off last and second, that an employer may not take race into account in setting criteria for the order of layoffs. Both assumptions are faulty.

Although it is true that a court may not order an employer to take race into account in the absence of a finding of discrimination, that is not the case with purely voluntary actions by the employer. Public school systems in particular should be allowed the latitude in making decisions as to who to lay off and who to retain, because they are charged with the heavy responsibility of assuring the

education of all children in the district and taking steps to make the process easier. In this case, the board has determined that to lay off teachers on a race neutral basis would result in the loss of minority teachers, to the detriment of the children. That would seem to be an appropriate decision for the board.

V. SCHOOL BOARDS SHOULD BE ALLOWED TO PROTECT THEMSELVES FROM DAMAGE SUITS UNDER SECTION 1983 BY TAKING CORRECTIVE ACTION WITHOUT A COURT ORDER.

This Court has on numerous occasions held that school boards have an affirmative duty to eliminate all effects of past discrimination and to assure the development of a unitary school system. See, e.g., Milliken v. Bradley, 433 U.S. 267 (1977); Green v. County School Boards, 391 U.S. 430 (1968); Louisiana v. United

States, 380 U.S. 433 (1965).

It is entirely conceivable that a court might agree with the board of education that at least one reason for the disproportionately low number of minority faculty members, before the board began affirmative efforts to increase that proportion, was because of past discriminatory action by a previous board of education. If this board has done nothing to rectify that discrimination, a court could order remedial efforts to begin immediately and, further, could hold the board liable in damages, under 42 U.S.C. 1983, and also award attorneys' fees under 42 U.S.C. 1988.

Yet, Petitioners argue that the board is unauthorized to make that determination itself and to take action on its own to assure that the positive gains in numbers

of minority faculty are not lost during the process of implementing a plan to reduce the labor force. Petitioners would have the board use a "color blind" scheme which would assuredly result in the loss of the majority of the black employees. Then the board would be called upon to sit back and wait for a court to hold its action discriminatory and order a damage award against the board. Surely the board should have the authority to make its own determination as to whether discrimination existed and, if so, the manner in which it should be addressed.

VI. CONCLUSION

On behalf of school boards across the country which are attempting to remove the effects of discrimination by their respective school districts, as well as by society at large, Amicus urges this Court not to tie their hands. School boards

should be allowed to use all available tools to assure each student in the school district an equal educational opportunity. Not all school boards are willing to adopt voluntary affirmative action plans, it being politically expedient, in many cases, to do nothing. But--where school boards take on the task voluntarily, the public and the courts owe a moral and constitutional duty to those boards to support their efforts.

Respectfully submitted,

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APPENDIX A

STATE STATUTORY PROVISIONS
SPECIFYING LAYOFF ORDER

State	Order of Layoff	*RIF Statute Citation
Alabama	None specified.	Code of Al. §16-24-8 (1977)
Alaska	None specified.	Ak. Stat. §14.20.175 (1984)
Arizona	None specified.	Az. Rev. Stat.Ann. §15-544 (1984)
Arkansas		None
California	Inverse seniority but deviations allowed to meet special needs or equal protection requirements	Ann.Calif. Educ.Code §44955(b), (d)(Supp. 1985)
Colorado	Nontenured first.	Co.Rev. Stat.§22-63-112(3) (1984)

* "Reduction in force"

State	Order of Layoff	RIF Statute Citation
Connecticut	Nontenured first. For tenured personnel, follow collective bargaining agreement or board policy.	Ct.Gen. Stat.Ann. §10-151(d) (Supp.1985)
Delaware	None specified.	Del.Code Ann.Tit.14 §1411(1981)
District of Columbia		None
Florida	Pursuant to terms of collective bargaining agreement; if none, board must prescribe RIF rules.	Fla.Stat. Ann.§231.36 (5)(Supp.) 1985)
Georgia	None specified.	Code of Ga. Ann.§20-2-940(a)(6) (1982)
Idaho	None specified.	Ida.Code §33-515 (Supp.1985)
Illinois	Nontenured first and inverse seniority but can deviate by collective bargaining or for affirmative action purposes.	Ill.Rev. Stat.122 §24-12 (1985)

State	Order of Layoff	RIF Statute Citation
Indiana	None specified.	Ind.Stat. §20-6.1-4-10(a)(5) (Supp.1984)
Iowa		None
Kansas		None
Kentucky	Inverse seniority.	Ky.Rev. Stat. §161.800 (1984)
Louisiana	Interests of the school system.	La.Opp. Atty. Gen. 1938-40 p. 1004.
Maine	Pursuant to negotiated agreement; may include but cannot be limited to seniority.	Me.Rev. Stat.Ann. Tit.20A §13201 (1984)
Maryland		None
Massachusetts	Nontenured first.	Mass.Gen.Laws Ann.71 §42 (1982)
Michigan	None specified.	Mich.Comp. Laws §38.105 (1982)

State	Order of Layoff	RIF Statute Citation
Minnesota	Inverse seniority but can deviate for affirmative action purposes.	Minn.Stat. §125.12 Subd.6b(d) (1984)
Mississippi		None
Missouri	Nontenured first and inverse seniority.	Rev.Stat.Mo. §168.291 (1984)
Montana	None specified.	Mt.Code Ann. §20-4-206(4) (1983)
Nebraska	Each board must adopt RIF policy which follows nontenured first unless would cause noncompliance with federal or state affirmative action requirements.	Neb.Stat. §§79-1264.05, 79-1254.08 (1984)
Nevada	None specified.	Nev.Rev.Stat. §391,312(g) (1983)
New Hampshire		None
New Jersey	Inverse seniority.	NJ Stat.Ann. §18A:28-9 et seq.(1968)

State	Order of Layoff	RIF Statute Citation
New Mexico		None
New York	Inverse seniority.	Consol.Laws NY 16 Educ. Code §2855 (1981 & Supp. 1985)
North Carolina	None specified.	NC Gen.Stat. §115C 325(e) §(10(1983)
North Dakota	None specified.	ND Cent.Code §15-53.1-26.1 (2)(1982)
Ohio	Nontenured first & inverse seniority	Oh.Rev.Code §3319.17 (1980)
Oklahoma		None
Oregon	Pursuant to affirmative action policy of district but also seniority and merit.	Or.Rev.Stat. §342.943(3) (1983)
Pennsylvania	Inverse seniority but not to supersede or preempt collective bargaining agreement; however, teacher not a bargaining unit member retains seniority.	24 Pa.Stat. §11-1125.1 (Supp. 1985)

State	Order of Layoff	RIF Statute Citation
Rhode Island	Inverse seniority but can deviate where necessary to retain teachers of technical subjects whose places more senior teachers cannot fill.	Gen.Laws R.I. §16-13-6 (1981)
South Carolina		None
South Dakota	All boards must establish written staff reduction policies.	SD Cod.Laws §13-10-11 (1982)
Tennessee	None specified.	Tenn.Code Ann. §49-5-511(b)(1) (1983)
Texas	Inverse seniority.	Tex.Code Ann. §13.110 (Supp.1985)
Utah	None specified.	Ut.Code Ann. §53.51-8 (1982)
Vermont	None specified.	Vt.Stat.Ann. Tit.16 563 (12)(1976)
Virginia	None specified.	Code of Va. §22.1-304 (1980)

State	Order of Layoff	RIF Statute Citation
Washington	None specified.	Rev.Code Wa. §28A 67.070 (1984)
West Virginia	None specified	W.Va.Code §18A-2-2 (Supp.1985)
Wisconsin	Inverse seniority but can deviate by collective bargaining agreement.	Wi.Stat. §118.23(4), (5) (1984)
Wyoming	None specified.	Wyo.Stat.Ann. §21-7-111(a)(iv)(1977)

SUMMARY

Statutory Analysis	Number of States
Total surveyed.....	51
With RIF statute.....	41
No layoff order specified.....	19
Layoff scheme specified.....	22
• Nontenured first- no deviations allowed	3
• Nontenured first- deviations allowed....	1
• Inverse seniority- no deviations.....	5
• Inverse seniority- deviations allowed....	5
• Nontenured first & inverse seniority- no deviations.....	2
• nontenured first & inverse seniority- deviations allowed....	1
• Take account of affirmative action, seniority and merit.....	2
• Interests of the school district.....	1
• According to collective bargaining agreement..	2
• School board must establish layoff policy	1

APPENDIX B

COUNCIL OF URBAN BOARDS
OF EDUCATION

Respondents to Survey

School District	Enrollment
ALASKA	
Anchorage	40,560
CALIFORNIA	
Anaheim	11,610
Los Angeles	672,183
Oakland	49,348
San Diego	110,655
COLORADO	
Aurora	23,787
Pueblo	18,475
DISTRICT OF COLUMBIA	86,568
FLORIDA	
Dade County, Miami	223,854
Orlando	88,485
Tampa	108,871
GEORGIA	
Atlanta	67,317
ILLINOIS	
Chicago	420,000
INDIANA	
Indianapolis	54,070
South Bend	21,952

School District	Enrollment
IOWA	
Cedar Rapids	17,829
KANSAS	
Kansas City	23,013
Topeka	14,500
Wichita	44,512
KENTUCKY	
Louisville	92,000
LOUISIANA	
Baton Rouge	55,700
MARYLAND	
Baltimore	116,872
MASSACHUSETTS	
Boston	55,470
MICHIGAN	
Ann Arbor	14,376
Detroit	191,387
Flint	30,876
Grand Rapids	34,236
MINNESOTA	
St. Paul	32,000
MISSOURI	
Springfield	22,917
NEBRASKA	
Omaha	41,193
NEVADA	
Reno	31,500

School District	Enrollment
NEW JERSEY	
Newark	57,296
NEW MEXICO	
Albuquerque	75,336
NEW YORK	
New York City	925,000
NORTH CAROLINA	
Charlotte	71,946
Raleigh	54,506
OHIO	
Canton	13,693
Columbus	67,761
Toledo	43,327
OKLAHOMA	
Oklahoma City	38,632
Tulsa	46,178
OREGON	
Portland	50,800
Salem	22,500
PENNSYLVANIA	
Philadelphia	203,000
Pittsburgh	41,269
TEXAS	
Dallas	127,000
Fort Worth	63,143
Houston	183,873

School District	Enrollment
VIRGINIA	
Alexandria	10,000
Charlotte-Mecklenburg	71,946
Hampton	20,466
Norfolk	35,649
Portsmouth	18,500
Richmond	31,500
Virginia Beach	56,150
WASHINGTON	
Seattle	42,438